IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9635 OF 2004

Anjana Anand Jagtap & Ors. .. Petitioners.
Vs.
Ranjana Vishwas Khare & Anr. .. Respondents.

Mr.R.S.Tripathi with Mr.V.K.Shukla for the petitioners.

Mr.R.G.Jagatp for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 10TH DECEMBER, 2004

P.C.:

1. Heard Mr.Tripathi, learned counsel for the petitioners and Mr.Jagatp, learned counsel for the respondents.

2. Rule, returnable forthwith.

3. Mr.Jagtap, learned counsel waives service for the respondents. By consent of the parties taken up for final hearing.

4. This petition is directed against the order dated 11.10.2004 by which the application Exhibit-35 seeking amendment of the plaint has been rejected. Initially the suit was filed for

injunction simplicitor. The plaintiff sought to amend the plaint and introduce the prayer for declaration. The trial court rejected the said application solely on the ground that the declaration sought by the plaintiff appears to be barred by law of limitation. The trial court has not recorded a positive finding to that effect. The law is well settled that in such a situation the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed. This position of law is settled by the Apex Court in **Ragu Thilak D.John Vs. S.Rayappan and Others 2001(2) SCC 472**. Keeping that in view and considering the impugned order and other material placed before me, in my opinion, the plea of limitation being disputed, could be made a subject-matter of the issue after allowing the amendment prayed. In the circumstances this petition is allowed subject to plea of limitation to be considered at appropriate stage. The amendment application Exhibit-35, is accordingly,

allowed. The petitioner to carry out amendment within four weeks from today. All contentions on merits are left open. Rule is disposed of in the aforesaid terms.

. The petition is disposed of.

(D.B.Bhosale, J.)

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